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Summary of Methyl Bromide Critical Use Meeting
Environmental Protection Agency, Washington DC
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EPA AIR DOCKET

Introductions

Sue Stendebach, EPA/OAR

Sue Stendebach opened the meeting by thanking everyone for attending second Methyl Bromide Critical Use Meeting. She requested that every participant introduce him/herself and state their affiliation. (Please refer to the end of this document for a list of attendees). [Amber has the list of attendees]

After introductions, Ms. Stendebach reminded everyone that the meeting would only last three hours. She then summarized the first meeting held on February 16th, 2001 that resulted in a discussion of the critical use process and during which some stakeholder concerns were aired on a preliminary basis. She explained that the purpose of the present meeting would be as follows:

- to further discuss important issues mentioned during the February 16th meeting;
- to continue declaration and interpretation of stakeholder needs and concerns; and
- to provide EPA with ideas regarding how to successfully complete the rulemaking.

Ms. Stendebach stressed the importance of participation in the meeting because without stakeholder input, EPA would not be aware of all stakeholder concerns. She also reminded everyone to state his or her name and affiliation prior to making a comment so that information could be accurately recorded.

Ms. Stendebach mentioned that the outline for the meeting would be as follows:

- quickly review the provisions of the Montreal Protocol, the Clean Air Act, and the timeline for rulemaking as discussed in the last meeting; and
- pose a variety of questions to stakeholders: some that originated from the last meeting and some that EPA considers to be major issues.

Ms. Stendebach mentioned that David McAllister and Tracey Heinzman-Smith, representing GLCC, brought slides that they wished to present. Ms. Heinzman-Smith responded by stating that she could discuss the information contained in her slides as it fit into the meeting discussion.

Review of Montreal Protocol Provisions, Clean Air Act Language, and Rulemaking Timeline
Amber Moreen, EPA/OAR

The meeting facilitator, Ms. Amber Moreen, briefly reviewed the provisions of the Montreal Protocol, the Clean Air Act, and the proposed EPA rulemaking timeline. She mentioned that the timeline displays the need to initiate the rulemaking process quickly and gives stakeholders an idea of a potential international review process.

Ms. Moreen stressed that EPA would attempt to publish a proposed rule in the fall of 2001 and a final rulemaking by the middle of 2002. She went on to state that once applications are submitted to the United States government, the following schedule will be adhered to:

- applications would need to be reviewed and prepared for nomination to the Parties by January 2003;
- parties would review all nominations from each government and provide EPA with a decision late in 2003; and
- users would be notified at the international level in the beginning to middle of 2004.

Ms. Moreen noted that another application cycle would commence in the middle of 2003, so that an applicant could re-apply for a 2005 exemption if their use was not granted in the first exemption cycle. However, a user would not be notified as to whether or not their use was granted until 2005 due to the lengthiness of the international process. Therefore, if a user does not apply until 2003, notification would not be received until closer to the phaseout date and thus, the actual planting time.

Ms. Moreen ensured that all stakeholder questions regarding this process were answered, and then went on to explain the Decisions of the Montreal Protocol and the language of the Clean Air Act. She pointed out that the last paragraph of the relevant Montreal Protocol Decisions is written such that non-Article 5 countries (e.g., United States, EU, Japan) must individually consider whether applicants have shown that the lack of methyl bromide has led to a significant market disruption. She stressed that decisions would not be made by the Technology and Economic Assessment Panel (TEAP).

Questions for Stakeholders

Please note that this section intends to provide an accurate summary of stakeholder responses. Although it follows the chronology of the meeting, it is not an exact transcript. Responses to most comments and questions were addressed by the meeting facilitator, Ms. Amber Moreen. Other EPA personnel, including Ms. Sue Stendebach and Mr. Paul Horwitz, also offered feedback on several stakeholder comments.

Ms. Moreen initiated the meeting by asking stakeholders about the type of information that would be most helpful regarding a posted list of methyl bromide alternatives. She requested stakeholder input on the following questions regarding the proposed list:

- What information should be included?
- How would the list be used in conjunction with the application process?

The following comments describe the discussion that ensued as a result of this question.

Edward M. Ruckert, McDermott, Will & Emery, Crop Protection Coalition

Mr. Ruckert commented on this topic by stating that in order to streamline the application process and use applicant and EPA time most effectively, EPA should post a list of acceptable alternatives. According to Mr. Ruckert, the limited time period established for the application process necessitates a list of this type because such a list could prevent possible duplications in the application process and could ensure that applicants are aware of all available alternatives. He also mentioned that allowing industry to comment on each of the posted alternatives would provide additional credibility.

Response:

Ms. Moreen responded by summarizing Mr. Ruckert's comments and asking if he thought that a list of alternatives should include:

- Use; and
- Alternatives adequate for applicant needs.

Edward M. Ruckert, McDermott, Will & Emery, Crop Protection Coalition

Mr. Ruckert responded by stating that he thought that a list should have posted scientific trials regarding each alternative to prove the efficacy of each alternative and provide a form of substantiation for the proposed alternatives.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith quoted two concepts from Decision IX/6:

- No technologically and economically feasible alternatives; and

- Significant market disruption.

She said that applicants that use methyl bromide for uses that currently have no adequate alternatives can quickly and hastily apply for an exemption based on the idea that the lack of methyl bromide for a specific end-use will lead to a significant market disruption. Ms. Heinzman-Smith commented that without an initial list of acceptable alternatives, applicants are uncertain of the baseline they are to evaluate themselves against. She argued that it would be useless to apply for an exemption stating that there are no alternatives for a specific end-use and later discover that research has been conducted to show that alternatives do in fact exist.

Response:

Ms. Moreen responded by inquiring about people's opinions as to how EPA should keep an up-to-date list of the most current research trials on alternatives.

The next set of stakeholder comments discussed ideas for how EPA can successfully accomplish this task.

Edward M. Ruckert, McDermott, Will & Emery, Crop Protection Coalition

Mr. Ruckert advised that researchers should report findings of all research and new technologies to EPA as they occur or are discovered.

David McAllister, GLCC

Mr. McAllister noted that the conversation until this point had omitted an important step in the exemption process: after a list of alternatives is developed, this list should serve as one of the inputs for developing a list of critical uses. He proposed a scheme where EPA would present a list of all possible uses of methyl bromide, and would simultaneously develop a list of alternatives. These lists, used in conjunction, could allow growers and users of methyl bromide to know exactly which uses match up with which technically and economically feasible alternatives, and would therefore act as a critical use list. Future alternatives could then be submitted to add to the list, showing what uses they can replace and proving that they meet all of the criteria for a critical use exemption. Therefore, Mr. McAllister concluded, it is not necessary to have a list of alternatives that is updated monthly; rather, the list can be updated as alternatives are approved.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith added that this process is analogous to the process for determining viable SNAP substitutes, but is more complicated. As new QDS alternatives are commercialized under SNAP, EPA posts a running list of these alternatives, both by end-use and by geographic region, and this list is published in the Federal Register or on a Web site so that people can find out about new alternatives as they become available. For methyl bromide, this list should be accessible and available to all interested parties, where developers of new substitutes can add their substitute to the list and then provide EPA with relevant information, as opposed to EPA initiating the process.

Pete [last name, Affiliation]

Pete said that information provided for this list must be substantiated and backed up with efficacy data.

Response:

Ms. Moreen responded that researchers should match the list provided by EPA with existing uses to determine which uses do not have alternatives. However, this approach may be too broad from the Parties' standpoint.

Two stakeholders responded to this comment.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith recognized this point and argued that if something currently has no alternative, it should have the first opportunity to be considered critical. Then, it can be determined if the lack of methyl bromide for this end-use would cause a significant market disruption.

Pete [last name, Affiliation]

Pete reiterated his earlier comment regarding the importance of efficacy data and substantiation.

Ms. Moreen responded with a question to Mr. Ruckert. She stated that people have indicated that alternatives can be determined by state, but questioned the manner in which distinctions can then be made between conditions that differ within a state, such as soil type, weather, and water table. Stated differently, if a list of alternatives is to be developed on a state-by-state basis, how are specific crop, soil, and weather circumstances taken into account?

The following remarks were made in an attempt to resolve this question.

Edward M. Ruckert, McDermott, Will & Emery, Crop Protection Coalition

Mr. Ruckert responded that the list should be presumptive, presenting all available tools.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith reiterated that the term "technically and economically feasible" is extremely broad. She commented that most analyses thus far have focused on technical feasibility, and that the alternatives discussed would be helpful for users. She also stressed that the Parties must understand that theoretical lab-tested alternatives may not be "technically and economically feasible" in the field.

[Unidentified Stakeholder]

An unidentified stakeholder then remarked that growers would end up trying to "prove a negative." In other words, will growers approach the government with research attempts that display the efficacy of an alternative or will the government make alternative efficacy data available to users?

Response:

EPA representative, Ms. Stendebach, responded that a list of alternatives is being developed, and hopefully manufacturers and distributors of alternatives will inform EPA if any viable substitutes were neglected from the list.

Ms. Moreen then asked the group if everyone would be comfortable with a list being published on the web. The next two comments discussed the availability of a published list of potential substitutes and were responded to by a facilitator.

David McAllister, GLCC

Mr. McAllister responded by saying that case studies of methyl bromide alternatives are already provided on EPA's methyl bromide phaseout Web site.

Jack [last name, Affiliation]

Jack expressed concern on relying solely on efficacy data, stating that other limitations, such as buffer zones and product combinations, need to be taken into account as well.

Response:

Ms. Moreen responded that the case studies and other published efficacy data are at least good starting points.

The next stakeholder requested information on this subject from EPA.

[Unidentified Stakeholder], Metham Sodium Task Force

An unidentified stakeholder representing the Metham Sodium Task Force requested that alternative manufacturers be contacted to obtain information on the development of alternatives so that everyone is kept aware of the most current information.

Ms. Moreen stated that evidence of technical feasibility (or lack thereof) and documentation are necessary in order to show the Parties that a technically feasible alternative does not exist for a certain end-use.

The following set of comments specify the requirements for possible alternatives.

David McAllister, GLCC and Tracey Heinzman-Smith, Howrey & Simon

Mr. McAllister and Ms. Heinzman-Smith provided a list of criteria for possible alternatives, stating that the alternative must:

- be registered for the application (if they are pesticides);
- have efficacy data;
- be efficacious based on actual field trials (as opposed to lab tests);
- pose no health risks to applicators;
- not require protective equipment that would severely restrict applicability;
- be commercially available in sufficient quantities; and
- have an overall risk that is not greater than that of methyl bromide.

Ms. Moreen asked if anyone had any additions to the list.

Jim Sargent, [Affiliation]

Mr. Sargent added that the alternative must be non-damaging to crops and any other materials that are being fumigated.

David McAllister, GLCC

Mr. McAllister stated that, an expert opinion, similar to that required for an emergency registration, should be involved in the process.

Bruce Helman, [Affiliation]

Mr. Helman pointed out that if an alternative is registered, it could be inferred that it is already environmentally acceptable.

Response:

Ms. Moreen said that Mr. Helman's point was a good one, and reiterated the need for economic availability and documentation of substitutes.

The next stakeholder comments discussed the need for economic availability of alternatives.

David McAllister, GLCC

Mr. McAllister suggested that EPA consult with other agencies, specifically USDA, because they have the right background to assist EPA with economic feasibility studies. He argued that criteria should be established specifying the maximum acceptable percent increase in treatment costs and the maximum acceptable percent decrease in profitability for any given alternative, and claimed that USDA can then use this information to provide an economic analysis of available substitutes.

Adam Sharp, American Farm Bureau Federation

Mr. Sharp mentioned that he asked farmers about what economic feasibility means from their perspective, and they responded that a methyl bromide alternative or combination should control the same range of pests as methyl bromide, while concurrently meeting industry standards. He also stated that economic feasibility criteria could be gathered by farmers based on five-year average per acre return in yield.

Response:

Ms. Moreen inquired whether the farmers consulted felt comfortable documenting each of those items.

Adam Sharp, American Farm Bureau Federation

Mr. Sharp replied that there are a number of areas from which this information could be garnered.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith said most growers or people that run warehouses keep track of their treatment costs and profitability or potential losses. She noted that this information is important because although treatment costs apply to everyone, profitability varies on a case-by-case basis.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere added that most figures and crop budgets are publicly available through state extension services.

Ms. Moreen asked if everyone was comfortable with the discussion so far. None of the attendees responded, and so a discussion began on significant market disruption and documentation.

Adam Sharp, American Farm Bureau Federation

Mr. Sharp began the discussion by introducing the idea that a loss of methyl bromide in the U.S. would result in an increase in imports, especially from countries that are not effected by the phaseout, which would cause a significant regional shift in production. He stated that market production suffers when return per acre drops below a five-year average, which can be based on personal farm records, university studies, etc., as described above.

David McAllister, GLCC

Mr. McAllister indicated that it is difficult to differentiate between significant market disruption and economic feasibility. He said that criteria are currently prioritized, where significant market disruption needs to be determined before economic feasibility can be assessed. He remarked that the Decision does not specifically mention alternatives; rather, they are only a means to avoid significant market disruption. He provided the example of a food processing facility asked the following question: If this is a critical use of methyl bromide, is the significant market disruption criterion determined before or after consideration of alternatives?

Vern Walter, WAW, Inc.

Mr. Walter mentioned that although phosphine could be a potential substitute in food plants, it corrodes equipment. He stressed that these other effects of the alternative need to be considered.

Adam Sharp, American Farm Bureau Federation

Mr. Sharp added that the availability of the alternative also must be considered.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith defined market disruptions in terms of the impact on a particular user of methyl bromide. She used turf farms as an example, stating that if all turf farms were faced with not having methyl bromide available, a significant market disruption would occur within the turf industry because turf still must be produced. The market would be significantly disrupted if the criteria introduced earlier by Mr. Sharp were not met. In particular, if substitute turf yields per dollar were a certain percent below the yield using methyl bromide such that less turf would be able to be produced, or such that costs to produce turf got so high that they would detrimentally affect the profitability of the industry, a break point would eventually be reached where there would exist a significantly lower quantity of turf in the marketplace. The demand would exceed the supply and consumers would try to obtain the commodity offshore.

David McAllister, GLCC

Mr. McAllister explained that GLCC was looking at the issue from a user/enterprise perspective as opposed to looking at the issue of significant market disruption at the consumer level. He provided the following hypothetical example: If methyl bromide is unavailable for fumigation of soils for a tree nursery for International Paper, the yields per acre of seedlings will drop by 50 percent. As a result, the price of paper will increase significantly in ten years. He reiterated the fact that GLCC is not referring to this type of situation; rather, they are looking at effects more from the user/enterprise perspective.

Response:

Ms. Moreen asked why Mr. McAllister thought consumer disruptions should not be considered?

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith responded that consumer effects occur too far into the future for growers and other methyl bromide users to consider.

Unidentified Stakeholder, Tree Trade Association

An unidentified stakeholder claimed that a downstream effect could occur as a result of international competition. Referring to Mr. McAllister's International Paper example, the unidentified stakeholder hypothesized that seedlings would then be grown on soils outside of the U.S., where growth rates are far greater than they are domestically. He concluded that a sense of economic impact should be assessed even though it is difficult to quantify.

Jim Clat, [Affiliation]

A mostly inaudible comment from Mr. Clat mentioned sources of information provided by manufacturers.

Jim Schaub, USDA

Mr. Schaub indicated that the discussion should be focused on how to define the market, i.e., how broadly to define a commodity, including a geographic component and a time dimension. He mentioned that the Federal Power Commission (FPC) and the Justice Department solved an analogous issue by viewing disruptions at the consumer level when struggling with a competition determination for anti-trusts (i.e., whether a merger will have a significant impact on a market). He concluded his comment by stating that after EPA decides how to define the market, it is then possible to determine significant market disruptions.

Edward M. Ruckert, Will & Emery, Crop Protection Agency

Mr. Ruckert vocalized an additional comment regarding defining a market disruption by examining consumer-level effects. He provided the following hypothetical example: With international trade in the state it is today, if strawberries can not be grown in the U.S. without methyl bromide, growers in Mexico would supply the U.S. market with strawberries, undoing the utility of exemption. Therefore, there is little or no effect at the consumer level; EPA should focus on the industry-level effects to define market disruptions.

Lee Murphy, [Affiliation]

A mostly inaudible comment from Mr. Murphy mentioned a 25 percent reduction in production.

Pete [last name, Affiliation]

Pete suggested that if EPA were to develop criteria for determining a significant market disruption based on five-year total average production, it would be difficult to determine which five-year period should be analyzed because of steadily increasing treatment costs.

Adam Sharp, American Farm Bureau Federation

[cannot hear all comments]

Mr. Sharp asked Ms. Moreen whether a baseline would be best established using a five- or ten-year period, and stated that establishing a baseline is difficult because EPA will have to predict future demand for the product and consider criteria other than total production.

Response:

Ms. Moreen asked whether the farmers Mr. Sharp interacted with express a preference for a five-year or a ten-year period for establishing a baseline.

Adam Sharp, American Farm Bureau Federation

Mr. Sharp indicated that the farmers interviewed did not express a preference regarding selecting a time period, but were concerned about shifts in the market and analyzing present market conditions to create a baseline for future use. With regard to economic feasibility and significant

market disruptions, Mr. Sharp suggested that posting a list of available alternatives would be a way to initiate research on this issue.

Unidentified Stakeholder

An unidentified stakeholder agreed with Mr. Sharp's comments and added that it would be difficult to establish a baseline for the post harvest sector because it is impossible to quantify future food contamination.

Response:

Ms. Moreen responded by stating that results from tests on alternatives exist, and one could project from those results to create a baseline. She clarified the unidentified stakeholder's comment by asking if he thought that no alternatives were available on a base level.

Unidentified stakeholder

The unidentified stakeholder affirmed that that was indeed the point he was trying to make.

Response:

Ms. Moreen asked the unidentified stakeholder if he would respond in a similar manner if alternatives were tested and made available for use in the post harvest use sector.

Unidentified Stakeholder

The Unidentified Stakeholder provided an inaudible response to Ms. Moreen's question.

Ms. Moreen changed the discussion topic so that stakeholders would respond to Mr. Shaw's comment on how EPA should define the methyl bromide market. The following set of stakeholder comments relate to this discussion.

Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition

Prior to addressing Ms. Moreen's question on the definition of a market, Mr. Ruckert required additional clarification regarding the discussion on whether or not the effectiveness of an alternative is quantifiable.

Response:

Ms. Moreen responded to Mr. Ruckert by restating the previously addressed question. Ms. Moreen explained that she was attempting to clarify the unidentified stakeholder's comment, stating that perhaps an alternative is not quantifiable if it has not been used on a large scale and long-term results can not be projected. However, she argued that if the alternative has been tested, there should be some data available to quantify the effectiveness of the alternative.

The following comments highlight the discussion on the definition of a market and may be used in determining definitions of a significant market disruption.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith addressed this topic by explaining that variations in pest type require EPA to define a market by individual commodities limited by geographic distinctions, as opposed to determining a market just by use (e.g., post harvest uses). She went on to state that methyl bromide is not a chemical that has broad industry-wide uses, and that users may utilize methyl bromide for one type pest in one region that might not be applicable to a similar pest in another geographic area. Although not entirely sure that the topics are analogous, Ms. Heinzman-Smith went on to mention that the Department of Justice (DoJ) Federal Power Commission (FPC) guidelines define a market using regional and geographic distinctions.

Ms. Moreen posed the comment previously introduced by Jim Schaub of USDA to the stakeholders to determine whether a market defined by commodity and geography would be too broad for this situation (e.g., canned tomatoes versus fresh tomatoes, same commodity grown and processed in the same region).

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith responded to this statement by asking Mr. Schaub if the market would have to be defined by species (e.g., Roma Tomatoes).

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere informed attendees that methyl bromide is only used on fresh tomatoes, not canned tomatoes.

Ms. Moreen stated that using fresh versus canned tomatoes to discuss this topic is not an appropriate instance. She proposed that the stakeholders consider this issue of with a different example, such as winter versus summer tomatoes.

Jim Schaub, USDA

Mr. Schaub suggested that EPA use registration definitions to define the market (e.g., Bermuda grass). He mentioned that there exists a certain amount of substitution between the commodities (i.e., turf farms may produce several grass varieties) and that not defining the market may lead to confusion among producers. Mr. Schaub concluded that the subject of defining market scope is critical and he did not think that it could be defined by stating examples. He suggested that EPA think about economic principles for defining a market and then rely on industry and users to apply these principles to specific commodities.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith agreed with Mr. Schaub's idea that the market may have to be defined more specifically by explaining how the word "turf" is synonymous with the word "fruit," meaning that stating that there are different types of fruit is similar to stating that there are different types of turf.

Unidentified Stakeholder

An unidentified stakeholder commented that it is important to make distinctions for the purposes of defining the market even within crops, because harvesting cycles and time required to control pests are not always the same.

Ms. Moreen redirected the topic of conversation by mentioning that many stakeholders had strong reactions when distinctions between the Section 18 exemption process and the methyl bromide critical use exemption process was discussed at the last meeting. She went on to ask if stakeholders had any other opinions on the issue. The following discussion highlights stakeholder comments on this issue.

Adam Sharp, American Farm Bureau Federation

Mr. Sharp stated that unlike Section 18, the methyl bromide critical use process will have to grant approval on a multi-year basis.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith mentioned that the Section 18 exemption process relates to emergency pest outbreaks and focuses on public health effects, while the critical use exemption process focuses more on economic and technical criteria.

Response:

Ms. Moreen clarified the discussion topic by restating that there are only a few portions of the Section 18 process that relate to this issue, and mentioned that EPA wanted feedback on whether stakeholders see distinctions between the manners in which feasible alternatives are determined through the Section 18 process and the critical use exemption process.

Unidentified Stakeholder

An unidentified stakeholder stated that the following three items are the main criteria used to determine whether an exemption is granted through the Section 18 process, and asked Ms. Moreen if she believed that these same criteria applied to the critical use exemption process:

- Will a lack of use of the product amount to substantial economic loss?
- Are there feasible alternatives that are commercially available?
- Does the situation occur frequently?

Response:

Ms. Moreen responded by stating that in some respects, she agreed with these criteria.

Unidentified Stakeholder

The unidentified stakeholder went on to suggest that all three of these criteria apply to the methyl bromide situation, and stated his agreement with Mr. Sharp regarding the need to grant exemptions on a multi-year basis based on the following reasons:

- There are not many available alternatives; and
- Bureaucracy of the system would make an annual application process difficult.

Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition

Mr. Ruckert inquired about EPA progress to register new alternatives.

Pete [last name, Affiliation]

Pete suggested looking back five years to define the methyl bromide market.

Response:

Ms. Moreen responded to Pete's comment by stating that some people have suggested that EPA examine a five-year time period to define the market.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere argued that examining a period five years ago to define the methyl bromide market will not take into consideration the fact that methyl bromide prices are increasing. He went on to express his concern about completing the rulemaking process in a timely manner in order to ensure the sustainability of the United States agricultural market.

Response:

In response to the previously stated comments, Ms. Moreen inquired as to whether or not Mr. Godbehere supported the measurement of a time period prior to five years ago for quantifying the methyl bromide market.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere suggested that EPA examine a specific time frame to average the high costs in order to define the market. He once again stressed the urgency of this rulemaking by describing a situation where high methyl bromide costs had led to a decrease in the amount of acres produced. Mr. Godbehere explained how there is currently no indication that planting will occur in the near future in Georgia because plastic has not yet been laid down to prepare for the upcoming season.

Ms. Moreen modified the discussion topic and stated that she understood the need to extend a exemption for longer than one year, but could not understand why stakeholders suggested that exemptions be granted for three to five years and went on to ask why a two to three year exemption is not an adequate amount of time. The following dialogue highlights stakeholder responses to this topic, comments on the timeframe for an exemption notification, and discusses the application process.

Unidentified Stakeholder

An unidentified stakeholder mentioned that users have to initiate the application process 18 months in advance.

Response:

Ms. Moreen agreed, and explained that the review process is lengthy and explained that it is set up in this manner so that nominations can be submitted to the Parties of the Montreal Protocol. She restated her question so that stakeholders would comment on the length of a granted exemption rather the length of the application process.

Unidentified Stakeholder

An unidentified stakeholder claimed that an exemption granted for less than two years would result in a perpetual application cycle, and went on to ask if the exemption renewal process would be less time consuming, i.e., approximately three months.

Response:

Ms. Moreen could not comment on the question posed, but did state that users would have to apply every year if the exemptions were granted annually. This comment led to a situation where many people began talking at the same time. The disorder was curbed by a comment from an EPA representative.

Paul Horwitz, OAR/EPA

Mr. Horwitz discussed the need to understand the international structure of this process. He stated that countries will be notified as to whether or not a use is granted at least 12 to 18 months prior to the calendar year in which the use is required, and hence over one year would elapse in which a farmer could consider alternatives to methyl bromide use. He restated that the process does allow plenty of time for a user to assess his/her pesticide use for the following year.

Unidentified Stakeholder

An unidentified stakeholder described a situation that displayed the need for a multi-year exemption. He explained that an orchard requires several years to reach to complete harvest and therefore cannot be planted if a grower is not sure that methyl bromide will be accessible throughout the multi-year production cycle.

David McAllister, Great Lakes Chemical Corporation

Mr. McAllister stated that it seemed unreasonable to submit applications to the EPA on an annual or biannual basis unless there has been significant progress in alternatives, or if a situation changes. He suggested that EPA should consider creating a permanent list of critical uses that the U.S. could submit to the Parties on an annual basis, rather than submitting the same justification each year. Mr. McAllister stated that this perpetual list could be updated by EPA, USDA, or someone wishing to promote a new alternative.

Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition

Mr. Ruckert stated that there are two main components of this situation that need to be analyzed. They are as follows:

- Length of time for an exemption grant; and
- Type of application process.

He suggested that the exemption process should be two to three years because reviewing applications on an annual basis is extremely resource-intensive for EPA. He also suggested that an annual application process is too burdensome and difficult for users, as well as resource-intensive and time consuming for EPA. He agreed with Mr. McAllister by stating that users should only re-apply for a critical use exemption if circumstances change.

At this point, Ms. Moreen asked the stakeholders if they had any additional input regarding this subject.

Unidentified Stakeholder

An unidentified stakeholder, responding to Mr. Horwitz's explanation of the international framework and the exemption notification period, noted that a nursery or any perennial crop requires two years notice of pesticide use prior to planting. In other words, a grower needs to know if methyl bromide is going to be available for more than one year.

Response:

Ms. Moreen requested that the unidentified stakeholder elaborate on this topic.

Adam Sharp, American Farm Bureau Federation

Mr. Sharp added that another reason why applications should not be processed annually is that a crop cycle does not necessarily follow the calendar year, and growers do not always plant in the spring and harvest in the fall. He mentioned that some growers make plans more than one year in advance.

Unidentified Stakeholder

To elaborate on the previously mentioned topic, the unidentified stakeholder described a typical grower's planting process and explained how pesticide knowledge is required more than one year in advance. He described a hypothetical situation where if it were the year 2003, and a grower planned to produce 100 acres of pistachios in 2005, he/she would not know whether they would be permitted to use methyl bromide in 2005. He explained that a grower in this situation would probably prefer to wait until receiving notification before continuing the planning process, and if notification was issued in 2004, the grower may not be able to plant by 2005. He stated that four to five years is an average planning period for a grower.

Unidentified Stakeholder

An unidentified stakeholder commented that walnut trees require methyl bromide for both pre-plant and post harvest uses. He stated that eliminating methyl bromide in either of those use categories would reduce product yield.

Response:

Ms. Moreen agreed with the unidentified stakeholder in that a circumstance such as the one mentioned is distinct and would be examined as such, and stated that a nursery could apply for an exemption in the middle of 2002 (the earliest date possible) and would be notified in early 2004 for a use in 2005.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere clarified the situations previously described to Ms. Moreen by explaining that growers are concerned about the time allotted for a notification because they are in contract with the nursery. He went on to explain that trees need to be fumigated immediately prior to relocation from the nursery to the field. Therefore, even if a nursery has access to methyl bromide, a grower is concerned that methyl bromide will not be available when it is necessary to move the trees, two to three years later.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith mentioned that the language in the Montreal Protocol does not state that EPA needs to re-substantiate the list of critical use exemptions annually, and that it only requires EPA to review and determine whether nominations meet the criteria. She suggested that if a substantial effort has been placed on identifying critical uses, it is appropriate to annually nominate the same list to avoid a perpetual cycle of applying for and nominating exemptions.

At this point in the meeting, the discussion turned to international issues. Specifically, topics such as expectations for applications and the percent of total production reserved for critical use exemptions were discussed.

Paul Horwitz, OAR/EPA

Mr. Horwitz provided a summary of the international point of view to date. He mentioned that initial international discussions have revealed that some countries believe that critical use exemptions represent a very small percentage (approximately one to three percent) of total national production. He indicated that countries expressing this viewpoint probably have not begun to explore the issue as in depth as the U.S. has, and that they will probably become more aware of criticality as the issue is investigated further. He stressed that it is essential to notice that the language of the Montreal Protocol is designed so that there is an incentive for users to investigate new alternatives to methyl bromide, and exemptions will be granted to those that have displayed advances in alternative research throughout the exemption period. Mr. Horwitz elaborated on this topic by stating that the best case that will be submitted to the Parties is one

that presents a plan to consider new alternatives. He stated that the feasibility of an alternative is not determined in just a one-year or a three-year research plan for methyl bromide use; rather, results of multiple crop cycle research may be necessary to determine efficacy. He stated that the Parties' consideration for multi-year exemption requests will be based on plans of action for trying to find alternatives in areas where there were originally none.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith contributed to the conversation by stating that if the U.S. could present a list of feasible alternatives and a corresponding use list to the Parties to illustrate current research, previous exemptions granted for uses that do not have feasible alternatives could be renewed without an application process. She went on to clarify this topic by asking Mr. Horwitz if it is important to show progress in analyzing research regarding new alternatives.

Paul Horwitz, OAR/EPA

Mr. Horwitz stated that the application process and Montreal Protocol language state that one must demonstrate that new alternatives are being examined.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith restated Mr. Horwitz's point that proving that one has explored other options to methyl bromide is an important part of this process.

Paul Horwitz, OAR/EPA

Mr. Horwitz remarked that he wanted all stakeholders to understand that the previously discussed information is his opinion based on preliminary discussions, and not a reflection of the U.S. or international position on the issue.

Matt Lynch, Albemarle

Mr. Lynch suggested that it would be inappropriate to require users to apply to EPA for exemptions annually in order to prove to the Parties that users are seeking alternatives. He mentioned that the application process for critical use exemptions should be discussed independently of the length of a granted exemption.

Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition

Mr. Ruckert pointed out that the methyl bromide situation can not be compared to the ban of CFCs, and asked Ms. Moreen whether EPA has considered streamlining the critical use process by eliminating a procedural step (specifically, the international process). Mr. Ruckert stated that eliminating the international process could save time and money for EPA and users because EPA is a professional organization and decisions made by EPA do not require additional examination.

Paul Horwitz, OAR/EPA

Mr. Horwitz responded to this comment by stating that EPA has not considered eliminating a procedural step. He went on to suggest that the purpose of the international review process is to ensure that the Montreal Protocol is implemented equally internationally and to allow all countries to more readily access research regarding new alternatives.

Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition

Mr. Ruckert responded to this statement by presenting the negative effects of procedural steps:

- Numerous steps contribute to the uncertainty in predicting exemption grants; and
- Extra steps create an opportunity for political issues to guide policy decisions.

Mr. Ruckert added that the biological nature of methyl bromide use requires that the system run efficiently to eliminate possible production and employment losses.

Unidentified Stakeholder

An unidentified stakeholder asked Mr. Horwitz whether the international community would consider that 80 to 90 percent of U.S. methyl bromide uses are critical.

Paul Horwitz, OAR/EPA

Mr. Horwitz stated that the international community would probably understand that 80 to 90 percent of U.S. methyl bromide uses are critical once more research has been completed. Mr. Horwitz went on to suggest that in the past, each time methyl bromide consumption has been reduced, many have assumed that a negative effect on industry would occur, and that 50 percent less methyl bromide use would lead to a 50 percent loss in production. He indicated that to date, this trend has not occurred, but that users will have to shift to use of alternatives in many places in order to phase out methyl bromide.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere explained that there has not been a shift to alternatives within the tomato industry; rather, the percent of chloropicrin mixed with methyl bromide has increased to extend volume, and production has decreased significantly.

[Can not hear all comments]

Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition

Mr. Ruckert stressed that agribusiness is an international issue and that the statement, "Ninety percent of our methyl bromide uses have alternatives," discredits our technical and problem-solving abilities.

Response:

Ms. Moreen replied to Mr. Ruckert, stating that the statement is slightly misleading, but reminding stakeholders that this issue was clarified in the previous meeting.

Edward M. Ruckert, McDermott, Will & Emery; Crop Protection Coalition

Mr. Ruckert suggested that the stakeholders listen to the Greenpeace representative's international perspective on this issue.

Greenpeace representative

[Difficult to hear]

The Greenpeace representative began his statements by explaining that there exists no doubt that a larger research effort (i.e., 8 to 9 years) would result in more feasible alternatives. He stressed that alternatives with a greater environmental risk than that of methyl bromide are not desirable. He also stressed that decision-makers must adhere to buffer zone requirements.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith wanted to remind all attendees that the suggestions brought up by herself and David McAllister do not represent just the viewpoint of Great Lakes Chemical Corporation, but also the viewpoint of a task force consisting of:

- Florida Fresh Fruit and Vegetable Association;
- Crop Protection Coalition; and
- Turf, nuts, and dried fruit industry representatives.

The following two stakeholder comments clarify topics discussed earlier in the meeting that were answered by Ms. Stendebach.

Unidentified Stakeholder

An unidentified stakeholder asked Ms. Moreen to clarify an issue brought up earlier in the meeting regarding commodities imported from countries such as Mexico that have not yet been affected by the methyl bromide ban.

Sue Stendebach, OAR/EPA

Ms. Stendebach reassured the unidentified stakeholder that the intention of the methyl bromide phaseout is not to relocate agricultural production offshore or to countries such as Mexico. She explained that EPA wants to be made aware of all potential competitive disabilities.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith wanted to clarify with EPA that market disruptions are defined by each country as opposed to at the international level.

Sue Stendebach, OAR/EPA

Ms. Stendebach pointed out that as Ms. Moreen mentioned earlier in the meeting, a significant market disruption is a topic that will be defined by individual countries, not by the Montreal Protocol.

Pete [last name, Affiliation]

To add to the conversation regarding the importance of the international critical use process, Pete mentioned that impartial third party verification regarding the feasibility of an alternative makes an individual application stronger.

Ms. Moreen transitioned into a new topic by asking the stakeholders whether they thought grower groups or individuals should submit applications to the U.S. government.

Unidentified Stakeholder

An unidentified stakeholder asked Ms. Moreen why the application process should be limited to groups or individuals.

Response:

Ms. Moreen stressed that no decisions regarding this topic have been made and asked the unidentified stakeholder for input on the subject.

Unidentified Stakeholder

An unidentified stakeholder suggested that anyone who is involved in the situation should be able to apply, both individual growers and grower groups. He went on to ask whether EPA prefers group applications to increase administrative efficiency.

Response:

Ms. Moreen replied to this comment by indicating that group applications are a consideration, but individual growers should be able to apply as well.

Unidentified Stakeholder

The unidentified stakeholder agreed with the previous comment that anyone should be able to apply for an exemption, and added that different organizations, such as the Farm Bureau, state departments, commodity groups, walnut commissions, etc., will all have different viewpoints as to who should submit applications.

Paul Horwitz, OAR/EPA

Mr. Horwitz asked stakeholders how EPA should avoid potential double counting that could result from application submittal from users and groups.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith suggested that since there will have to be an established date to end the annual application cycle, EPA could publish a list of applications received for each use pattern. She further suggested that users are the best people to apply for an exemption because they have the most data available regarding previously discussed criteria.

Sue Stendebach, OAR/EPA

Ms. Stendebach asked stakeholders for their feedback regarding the following potential application process:

- users apply to state agriculture departments;
- state agriculture departments aggregate similar applications;
- aggregated applications are sent to EPA.

Unidentified Stakeholder

A mostly inaudible comment by an unidentified stakeholder stressed the importance of the application process by citing an example related to the carrot industry.

Pete [last name, Affiliation]

Pete mentioned that stakeholders should realize that there are financial limitations in this rulemaking, and that stakeholders must allow for some trade-offs. He compared the Section 18 process to this situation by stating that 400 to 600 applications are processed per year through Section 18, requiring a significant amount of time and resources. He indicated that there will be a learning curve for processing; the first year will be the most time consuming and resource-intensive. Pete also stated that once EPA recognizes where critical uses exist, the application processing speed will increase considerably.

Unidentified Stakeholder

An unidentified stakeholder agreed with Pete in that it would be fairly resource-intensive to provide and compose the use list discussed previously, but stressed the importance of having such a list.

Unidentified Stakeholder

Another unidentified stakeholder mentioned that he arrived at the meeting late and inquired as to whether EPA planned to summarize their action items as part of the meeting agenda.

Response:

Ms. Moreen stated that all suggestions would be taken into consideration, that there is a February 16, 2001 meeting summary available, a summary of today's meeting would be made available, and that EPA is not ready to present specific action items.

Sue Stendebach, OAR/EPA

Ms. Stendebach added that EPA considers the following to be the current general action items:

- begin writing a regulation;
- compile more research, including written comments from stakeholders; and
- create a sensible rulemaking.

Ms. Moreen mentioned that she wanted to continue the discussion regarding stakeholder preference regarding who should apply for exemptions: a larger body or a user. The following stakeholder comment was noted by EPA representatives but did not require a response.

Unidentified Stakeholder, Tree Trade Association

An unidentified stakeholder compared this situation to that of the tree industry. He indicated that there are 38 state associations for the tree industry and that the storm water permitting system presents an opportunity to use group applications or apply individually through a state department of agriculture. He suggested that EPA examine this system to determine which option is more administratively effective, and stressed that each individual commodity should determine the most effective option based the comfort level that users have with various institutions.

The following discussion summarizes stakeholder comments regarding labeling.

Pete [last name, Affiliation]

Pete reminded the stakeholders that a label must be created when granting a Section 18 exemption, and asked if stakeholders thought that companies would be willing to provide a methyl bromide label.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith suggested that producers create a separate label for critical uses, and that EPA should avoid a labeling system analogous to the Section 18 process in order to limit the number of labels that would have to be produced.

Pete [last name, Affiliation]

Pete stated that if labels for critical uses could not be crop-specific, rather, they would have to be assigned to individual growers. He illustrated this point by presenting the following example: a label will have to be produced for Farmer X at Farm X for Use X so that, for instance, a user in Florida does not use methyl bromide with a California label.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith suggested that inspectors could deal with enforcement issues.

[Can not hear all comments]

Pete [last name, Affiliation]

Pete compared Section 18 exemptions to this situation and further discussed the issue surrounding enforcement.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith stated that labeling would depend on how broad an exemption is (i.e., will labels be limited by county, state, or commodity). She also suggested that exemptions should be commodity-specific rather than region-specific.

[cannot hear all comments]

A conversation then transpired between Pete, Ms. Heinzman-Smith, and an unidentified stakeholder regarding specific criteria established for Section 18 exemptions.

Unidentified Stakeholder

An unidentified stakeholder mentioned that if there are 600 applications, it will be necessary to aggregate them at some level.

Ms. Moreen steered the conversation back to the issue of the application process by stating that she required stakeholder input on the subject of applications. The following dialogue highlights this discussion.

Unidentified Stakeholder

An unidentified stakeholder asked Ms. Moreen if applications would be filed in each state and subsequently forwarded EPA, or if individuals would apply directly to EPA.

Response:

Ms. Moreen responded by stating that the EPA has not yet determined the answer to that question and that stakeholder input is welcome.

Unidentified Stakeholder

An unidentified stakeholder remarked that at some point EPA will probably adopt the Section 18 process because many are familiar with it.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith asked Ms. Moreen the following questions regarding state agriculture departments:

- Do state agriculture departments have expertise in this area?
- Will state agriculture departments aggregate applications?
- Will state agriculture departments evaluate applications, adding another layer of review?

[cannot hear all comments]

Unidentified Stakeholder

An unidentified stakeholder mentioned that Ms. Heinzman-Smith brought up a good point.

The following comment was not related to the application process and was responded to by the Greenpeace representative.

Unidentified Stakeholder

An unidentified stakeholder informed the Greenpeace representative that excessive amounts of money have been spent looking for alternatives over the past ten years and asked if efforts have been initiated by Greenpeace to assist with this research.

Greenpeace Representative

The Greenpeace representative stated that no such efforts have been initiated by Greenpeace.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith reverted the conversation topic back to the workings of the critical use exemption process by stating that EPA should consider creating an initial list of critical uses and alternatives, and that stakeholders could examine this list throughout the application process. She went on to state that a list of this type would provide an opportunity for users to examine the most current information. Ms. Heinzman-Smith also suggested that the process could be more efficient if USDA could provide information and determine whether applicants have demonstrated a significant market disruption, and if EPA could provide the information and determine whether uses have technically and economically feasible alternatives. She mentioned that she had not thought about how to aggregate applications, but stated that allowing user communities to apply would be an efficient method because it would limit the number of applications to be reviewed.

Ms. Moreen summarized the stakeholder comments regarding the application submission process as follows:

- It would be appropriate to incorporate state departments of agriculture into the critical use process because many stakeholders are accustomed to working with them through the Section 18 process;
- Grower groups should be allowed to submit applications because many users are comfortable with these organizations; and
- Growers that are not part of these organizations should also be able to apply.

Unidentified Stakeholder

An unidentified stakeholder restated that grower groups do not represent all stakeholders.

Response:

Ms. Moreen asked the unidentified stakeholder if he thought that individuals that are not part of an association feel comfortable applying through the state department of agriculture or directly to U.S. EPA.

Unidentified Stakeholder

The unidentified stakeholder replied that as long as users are aware of the required documentation, it does not matter what governmental body is involved in the process.

David McAllister, Great Lakes Chemical Corporation

Mr. McAllister suggested that the submission process be an open process worded in such a way that joint submissions from groups or various organizations are encouraged. He stated that from a practical standpoint, individuals would probably prefer to submit an application with a group in order to limit the amount of work that must be completed by the individual. An open application system such as this would limit the total number of applications.

Once again, Ms. Moreen steered the conversation back to the issue of the application process and reminded the stakeholders that there still must be a method to prevent counting requests for a

use more than once. She mentioned that Ms. Heinzman-Smith had suggested that EPA distribute some type of notice to users, but if there is a deadline for submitting an application it might be too late to ensure that users are aware of all submitted applications.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith suggested that EPA post applications on the Internet as they are received so that applicants can verify that a request has not already been submitted.

Sue Stendebach, OAR/EPA

Ms. Stendebach reminded stakeholders that there could be confidential business information (CBI) issues that would not allow EPA to post such information on the Internet.

David McAllister, Great Lakes Chemical Corporation

Mr. McAllister mentioned that if applications are commodity- and region-specific, EPA could probably determine if there is an overlap in requests, and that only ambiguous applications would allow the possibility for double counting.

Unidentified Stakeholder, Tree Trade Association

An unidentified stakeholder described the submission process for a storm water permit to Ms. Moreen. He mentioned that when a group application is received, the names of individuals within the group are also submitted, and those people whose names are not in the group submit applications individually. He added that a process of this type presents a business opportunity for associations to entice new members.

Matt Lynch, Albemarle

Mr. Lynch reminded the meeting attendees that the system should be open so that users that prefer to apply as individuals are not forced to become involved with an association.

Paul Horwitz, OAR/EPA

Mr. Horwitz mentioned that there probably would not be a limit on the number of exemptions granted because the Montreal Protocol language states that:

"This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses"

He also stated that in the past, the same language has been applied to limit the actual tonnage of methyl bromide exempted, and if a grower group requires 4,000 tons and individual farmers growing the same crop claim to require an aggregate 4,000 tons, the concern about double counting arises if there is not much use in the entire industry.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere mentioned that the Economic Research Service (ERS) could help to ensure that double counting does not occur.

Paul Horwitz, OAR/EPA

Mr. Horwitz questioned whether ERS would know how many tons of methyl bromide would be needed.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith interrupted Mr. Horwitz and indicated that the Parties must recognize that it is difficult to predict quantities of methyl bromide because many manufacturers produce it, as opposed to only a few companies producing CFC-12 for metered dose inhalers (i.e., CFC-12 producers know how much will be sold next year and can predict the exact tonnage needed). She went on to remark that it would not be possible to determine a detailed estimate for methyl bromide because weather conditions and pests can not be predicted. She asked Ms. Moreen if the government is aware of this situation.

Response:

Ms. Moreen responded by stating that the government is aware of this situation and suggested that it may be possible to submit a range of the possible volume needed so that EPA can determine the adequate amount for each use.

Unidentified Stakeholder

An unidentified stakeholder mentioned that the methyl bromide application process should be analogous to the Section 18 application process.

The following two statements relate to the proposed list of alternatives.

Vern Walter, WAW, Inc.

Mr. Walter indicated that a proposed list of alternatives should contain the advantages and limitations of each alternative. He requested that Bill Thomas discuss the progress of this proposed list, and inquired about the possibility of posting the list on the Internet.

Bill Thomas, OAR/EPA

Dr. Thomas mentioned that he was trying not to comment because he wanted to listen to stakeholder input, and that he has been working to create a list since 1992 with an interagency EPA/USDA Working Group created specifically to analyze potential alternatives. He indicated that the alternatives identified thus far can be separated into three different "piles:"

- Effective alternatives that are unavailable for various reasons (e.g., regulatory hurdles, buffer zone requirements, labeling issues, cost-effectiveness, etc.);
- Alternatives that are already in use; and
- Experimentally effective alternatives that are not commercially available.

He went on to indicate that he did not want to comment any further because he is involved with other groups such as OPP, USDA, ARS, ERS, and APHIS.

Ms. Moreen changed the subject to discuss the emergency use application process and whether stakeholders thought that applications should be submitted to state departments of agriculture.

There was no response regarding this issue, so Ms. Moreen assumed that stakeholders wanted the emergency use application process to function identically to the critical use process. She asked stakeholders which governmental body should assess emergency uses.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere proposed that APHIS, USDA, and state departments of agriculture are all qualified to assess emergency use exemptions.

Susan O'Toole and Several Unidentified Stakeholders

Ms. O'Toole initiated a conversation discussing the differences between quarantine and preshipment (QPS) exemptions, critical use exemptions, and emergency exemptions.

Ms. Moreen resolved this discussion by explaining the main differences between the exemption types.

Sue Stendebach, OAR/EPA

Ms. Stendebach added to Ms. Moreen's explanation by stating that preshipment exemptions are used for export products, quarantine exemptions are used for controlling pests between states, and emergency exemptions are used for health threats.

The following stakeholder comment was noted by EPA representatives but did not require a response.

David McAllister, Great Lakes Chemical Corporation

Mr. McAllister stated that any emergency application would require some validation by a regulatory agency.

Ms. Moreen remarked that she did not have any other specific questions and opened the meeting up to any other suggestions or comments. The following three comments were responded to by a facilitator or an EPA representative.

Unidentified Stakeholder

An unidentified stakeholder asked Ms. Moreen whether Section 18 exemptions will be applicable after the phaseout.

Response:

Ms. Moreen stated that methyl bromide use will be phased out through the Clean Air Act as of 2005, and mentioned that a user that has been granted a Section 18 exemption will have to apply for an extension through the critical use process, possibly in conjunction with a Section 18 exemption.

Sue Stendebach, OAR/EPA

Ms. Stendebach mentioned that EPA would work closely with OPP to determine what would be considered an emergency use, and that all emergency situations would probably be considered under the critical use and emergency exemption process.

David McAllister, Great Lakes Chemical Corporation

Mr. McAllister asked Ms. Moreen to clarify whether the Clean Air Act would regulate production as opposed to use, as is the case for FIFRA regulations.

Unidentified Stakeholder

An unidentified stakeholder asked if OAR would review Section 18 labels.

Sue Stendebach, OAR/EPA

Ms. Stendebach replied to the stakeholder questions by stating that OAR would work with OPP, but that it was OPP's responsibility to review Section 18 labels. She also said that Section 18 exemptions would still be applicable despite the fact that a methyl bromide phaseout had occurred.

David McAllister, Great Lakes Chemical Corporation

Mr. McAllister suggested that the Section 18 process is unnecessary for methyl bromide because users can apply for an emergency use exemption under the critical use exemption process, and asked Ms. Moreen what will happen to pre-existing methyl bromide Section 18 exemptions after the phaseout.

Paul Horwitz, OAR/EPA

Mr. Horwitz indicated that stakeholders need to discuss how to implement exemptions once they are granted.

The following stakeholder comment was noted by EPA representatives, but many people began to talk at the same time, making it difficult to hear the response.

Matt Lynch, Albemarle

Mr. Lynch asked Ms. Moreen whether it is possible to have an emergency use in the future that would not be subject to the Section 18 process.

[Amber can you provide a response?]

The following stakeholder comment was noted by EPA representatives but did not require a response.

Greenpeace Representative

A Greenpeace representative remarked that EPA should publicize the dialogue between OAR and OPP so that all stakeholders are aware of progress, plans, and options as decisions are made.

The following question was responded to by an unidentified stakeholder.

Unidentified Stakeholder

An unidentified stakeholder required clarification regarding the relationship between methyl bromide critical use exemptions and Section 18 emergency exemptions.

Unidentified Stakeholder

Another unidentified stakeholder explained that Section 18 and the critical use exemption process are separate statutes, and that it is not necessary to look for similarities within each to make the critical use exemption process more efficient. He went on to mention that Clean Air Act requirements would not take precedence over FIFRA requirements.

The following series of questions and responses highlight the dialogue related to publicizing a list of alternatives.

Steve Godbehare, Hendrix & Dale, Inc.

Mr. Godbehare agreed with the Greenpeace representative and suggested that EPA publicize alternatives as they are identified so that users can start preparing for the phaseout.

Bill Thomas, OAR/EPA

Dr. Thomas remarked that the list will be made available in the next several months, as CBI issues are resolved.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith suggested that EPA/OAR should publicize the alternatives that are already commercially available, while continuing to resolve CBI issues.

Bill Thomas, OAR/EPA

Dr. Thomas stated that it is critical to consider all possible alternatives in this situation.

Steve Godbehare, Hendrix & Dale, Inc.

Mr. Godbehare suggested that a list of available alternatives should be posted on the Internet. He advised that the list should be updated as more information is discovered so that growers could comment on it and send feedback to EPA.

Bill Thomas, OAR/EPA

Dr. Thomas indicated that the interagency working group has been working to resolve this issue for 3 to 4 years at the same priority level as establishing the rulemaking for the critical use exemption process. He then introduced Ken Vick, the USDA head of the interagency working group. He added that EPA has spoken to growers in different states and has brought growers to Washington D.C. to create a realistic list of available alternatives.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith indicated that, as mentioned previously, users must have a baseline to which to compare themselves so that the application process is not extremely difficult, time consuming, and resource-intensive, and to avoid the need to reapply if all available alternatives are not known.

Sue Stendebach, OAR/EPA

Ms. Stendebach indicated that a list will be made available.

Tracey Heinzman-Smith, Howrey & Simon

Ms. Heinzman-Smith asked Dr. Thomas if the list will be made available prior to the proposed rulemaking in August.

Bill Thomas, OAR/EPA

Dr. Thomas stated that the list will be made available around the same time as proposed rule, around the end of the summer (July or August 2001).

Ken Vick, USDA

Mr. Vick stated that the following reasons contributed to the delay in posting a potential list of alternatives:

- Research on alternatives included footnotes by various studies with regional disparities; and
- Growers made subjective and sometimes contradictory judgements about chemicals.

Bill Thomas, OAR/EPA

Dr. Thomas asked stakeholders if they would be comfortable with an Internet posting of the potential list of alternatives.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere stated that if users were made aware of the posting, the Internet would be an appropriate place to display the information.

Bill Thomas, OAR/EPA

Dr. Thomas responded to Mr. Godbehere by asking how EPA should make users aware of the availability of the list.

Steve Godbehere, Hendrix & Dale, Inc.

Mr. Godbehere suggested that EPA use an extension service, which operates by extracting information from local growers.

Unidentified Stakeholder

An unidentified stakeholder asked Ms. Moreen about the length of time designated to the emergency use notification process.

Response:

Ms. Moreen responded that the process would not be time consuming and that notification would probably be received one to two days beforehand. She went on to indicate that after an emergency use is granted, a critical use review would be completed at the international level to advise parties if the proposed use can qualify as an emergency in the future.

Unidentified Stakeholder

An unidentified stakeholder asked Ms. Moreen whether the application process would involve a public comment period after applications are submitted.

Response:

Ms. Moreen replied that a public comment period is a possibility and asked stakeholders if there were any more comments or suggestions.

Paul Horwitz, OAR/EPA

Mr. Horwitz stressed that the following comment is important but is his own opinion and not necessarily the position of the U.S. government. He began his comment by reiterating the importance for users to submit any field research data so that applicants can display both historic efforts and future efforts to try alternatives. He also mentioned that a robust plan will support multiple-year requests, and that the application package will probably request information and to the degree possible, money that has been spent, different alternatives studied, and case studies that show specific results.

Closing Statement

Ms. Moreen thanked everyone for attending the meeting and encouraged stakeholders to contact EPA with any additional comments or special circumstances. She asked all attendees to take a business card and the February 16, 2001 Critical Use Meeting Summary, and reminded everyone to sign the participant list before departing.